



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/541,077	06/29/2005	Eduardo-Alexander Van Den Berg	72998-013000/US	4307
7590 Greenberg Traurig Suite 400E 2450 Colorado Avenue Santa Monica, CA 90404			EXAMINER KUMAR, RAKESH	
			ART UNIT 3651	PAPER NUMBER
			MAIL DATE 02/27/2008	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No.	Applicant(s)	
	10/541,077	VAN DEN BERG, EDUARDO-ALEXANDER	
	Examiner	Art Unit	
	Rakesh Kumar	3654	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 06 November 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-3 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-3 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on 06/29/2005; 01/11/2007 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All    b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 11/06/2007 has been entered.

#### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-3 and 11-13 are rejected under 35 U.S.C. 103(a) as being unpatentable over Bartfield et al. (U.S. Patent Number 4,618,073) in further view of Wittern Jr. et al. (U.S. Patent Number 5,791,516).

3. Referring to claims 1 and 3. Bartfield discloses a dispensing assembly (Figure 1) comprising:

a dispensing device for cups , each comprising a store for a series of nested cups (13-20; Figure 1),

a dispensing mechanism (44) for removing individual cups from said series (13-20) and displacing the individual cups (22; Figure 8),

and actuating means (138; see Figures 8 and 9 in entirety) for said dispensing mechanism (44).

Bartfield does not specifically disclose the store of cups comprising a plurality of different sizes.

Wittern discloses a vending apparatus wherein the actuating means (Figure 15) is controlled by an electronic controller (11), which is activated upon depositing the appropriate moneys or tokens in the vending apparatus.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify the teaching of Bartfield to include a store of cups comprising a plurality of different sizes because the dispenser would be able to provide a greater selection of articles to be dispensed.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to include an input mechanism in the cup (or vases) dispensing assembly of Bartfield as taught by Wittern to dispense an individual cup upon reacting to an insertion of a token input because the cups could be electronically dispensed without a need for a salesperson thus reducing the operating cost.

It would have been further obvious to one of ordinary skill in the art at the time the invention was made to have the dispensing assembly dispense different size cups from one assembly in order to increase the selection.

It would have also been further obvious to one of ordinary skill in the art at the time the invention was made to include two dispensing devices as compared to a single dispensing device as disclosed by the teaching of Bartfield in order to allow multiple users to access the dispensed items. Further, it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art. *St. Regis Paper Co. v. Bemis Co.*, 193 USPQ 8.

4. Referring to claim 2. Bartfield discloses a dispensing assembly (Figure 1) in which the store (see store area holding cup sleeves; Figure 1) is designed to receive multiple series (13-20) arranged next to one another,

one series (series 20) being arranged so as to interact with the said dispensing mechanism (44), and

conveyor means (40-42) being provided in order to move the other series (12-19) into the position of the first series (20).

### ***Response to Arguments***

The Applicant argues the cited reference do not disclose the dispensing of a vase, therefore the cited art do not read of the applicants claimed limitations. Bartfield

specifically discloses a vending apparatus designed to dispense a variety of different size cups from the apparatus. In the view of the Office a cup as broadly construed is a vase. The apparatus of Bartfield is specifically designed to dispense cups, since a cup is construed to be a vase, the dispenser of Bartfield would be able dispense vases. In regards to applicants arguments pertaining to dispensing different sized shapes for vases the applicants drawings only show a single type of vase.

In response to applicant's argument that the examiner's conclusion of obviousness is based upon improper hindsight reasoning, it must be recognized that any judgment on obviousness is in a sense necessarily a reconstruction based upon hindsight reasoning. But so long as it takes into account only knowledge which was within the level of ordinary skill at the time the claimed invention was made, and does not include knowledge gleaned only from the applicant's disclosure, such a reconstruction is proper. See *In re McLaughlin*, 443 F.2d 1392, 170 USPQ 209 (CCPA 1971).

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Application/Control Number:  
10/541,077  
Art Unit: 3654

Page 6

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rakesh Kumar whose telephone number is (517) 272-8314. The examiner can normally be reached on 8:00AM - 4:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Crawford can be reached on (571) 272-6911. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

RK  
December 5, 2007

  
RAKESH KUMAR  
SUPERVISOR